

FILED

JAN 26 2010

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAPOSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

6	In re:)	Case No. 09-90326-D-7
7	BRASIL BROTHERS DAIRY,)	
8)	
9	Debtor.)	
10	GARY FARRAR, Chapter 7 Trustee,)	Adv. Pro. No. 09-9076-D
11)	Docket Control No. KDG-1
12	Plaintiff,)	
13	v.)	
14	NATIONAL MILK PRODUCERS)	DATE: January 13, 2010
15	FEDERATION, et al.,)	TIME: 10:30 a.m.
16	Defendants.)	DEPT: D

17 This memorandum decision is not approved for publication and may
18 not be cited except when relevant under the doctrine of law of
the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

20 On December 10, 2009, defendants Maria Enes ("Enes") and
21 Frank Lima ("Lima") filed a motion to dismiss the complaint
22 herein, bearing Docket Control No. KDG-1 (the "Motion"), in which
23 they seek dismissal of the plaintiff's claims for relief against
24 them -- the first and second claims for relief as against Enes
25 (for declaratory relief and turnover), and the fourth, fifth, and
26 sixth claims for relief as against Enes and Lima (for damages for
27 violation of automatic stay, avoidance of a post-petition
28 transfer, and recovery of a transfer from initial transferee or

1 immediate or mediate transferee of initial transferee). For the
2 reasons set forth below, the court will deny the Motion.

3 I. ANALYSIS

4 This court has jurisdiction over the Motion pursuant to 28
5 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
6 under 28 U.S.C. § 157(b)(2)(A), (E), and (O).

7 A. Standards for Dismissal under Rule 12(b)(6)

8 The United States Supreme Court has recently adopted a
9 "plausibility" standard for assessing Rule 12(b)(6) motions,
10 analyzing the complaint before it in terms of whether it
11 contained enough factual allegations, taken as true, to plausibly
12 suggest that the plaintiff was entitled to relief. Bell Atl.
13 Corp. v. Twombly, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929, 945
14 (2007). "[W]e do not require heightened fact pleading of
15 specifics, but only enough facts to state a claim to relief that
16 is plausible on its face." 127 S. Ct. at 1974.

17 The Court did not disturb its earlier pronouncement in
18 Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683 (1974), that on a
19 motion to dismiss, "[t]he issue is not whether a plaintiff will
20 ultimately prevail but whether the claimant is entitled to offer
21 evidence to support the claims." 416 U.S. at 236. Thus, "a
22 well-pleaded complaint may proceed even if it appears 'that a
23 recovery is very remote and unlikely.'" Bell Atl. Corp., 127 S.
24 Ct. at 1965, quoting and characterizing Scheuer v. Rhodes, 416
25 U.S. at 236.

26 B. The Second, Fourth, Fifth, and Sixth Claims for Relief

27 The complaint herein, filed by Gary Farrar, chapter 7
28 trustee (the "trustee") of the estate of Brasil Brothers Dairy

1 (the "debtor"), concerns a \$323,745 check issued nine days post-
2 petition by National Milk Producers Federation, dba Cooperatives
3 Working Together ("CWT") to Enes, through her attorney, Lima.
4 The trustee alleges that the check represented a portion of the
5 proceeds due the debtor for cattle it had sold on January 1 and
6 2, 2009 pursuant to the CWT Dairy Herd Retirement Program (the
7 "CWT program").

8 Enes' and Lima's primary contention in the Motion is that
9 the funds paid by CWT to Enes were the subject of a pre-petition
10 assignment by the debtor, and thus, were not property of the
11 estate at the time of the chapter 7 filing or at the time of the
12 payment to Enes. As a result, they argue, the complaint fails to
13 state a claim for relief in the form of turnover, damages for
14 violation of the stay, or avoidance of the transfer.

15 This contention was previously raised by CWT in its motion
16 to dismiss filed November 20, 2010, on which the court has issued
17 a memorandum decision entered January 22, 2010 as docket entry
18 number 32 (the "CWT decision"). The court refers to and
19 incorporates by reference herein the findings and conclusions
20 contained in the CWT decision which pertain to this issue.

21 Finding nothing in the present Motion to warrant any addition to
22 or departure from those findings and conclusions, the court will
23 deny the Motion as to the second claim for relief, as against
24 Enes, and the fourth, fifth, and sixth claims for relief, as
25 against Enes and Lima.

26 C. The First Claim for Relief

27 As it pertains to the first claim for relief, the claim for
28 declaratory relief, the Motion is opposed by both the trustee and

1 defendant Scott Allen Sanders ("Sanders").

2 Declaratory relief claims "are justiciable 'if there is a
3 substantial controversy, between parties having adverse legal
4 interests, of sufficient immediacy and reality to warrant the
5 issuance of a declaratory judgment.'" National Basketball Asso.
6 v. SDC Basketball Club, Inc., 815 F.2d 562, 565 (9th Cir. 1987),
7 quoting Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S.
8 270, 273 (1941).

9 Enes claims there is no justiciable controversy between the
10 trustee and her,¹ because "all of the relevant factual
11 allegations support Defendant Enes' status as a secured creditor
12 and assignee to the Payment."^{2 3} However, in support of this
13 conclusion, Enes incorrectly attributes the following contentions
14 to the trustee: that in 2001, the debtor had granted to Enes a
15 security interest in "all dairy livestock," that in 2001 and
16 2006, respectively, Enes had perfected and continued perfection
17 of her security interest in "all of Debtor's dairy livestock,"
18 and that in 2006, the debtor had signed a promissory note in
19 Enes' favor secured by "all of Debtor's dairy livestock."⁴

20 Enes cites language in the complaint quoting the description
21 of collateral contained in the security agreement and later
22 paragraphs that simply refer back to "the collateral listed
23

24 1. Enes does not mention Sanders at all.

25 2. Motion, at 6:17-18.

26 3. Enes' status as an assignee, or lack thereof, is
27 discussed in the CWT decision. The following discussion
therefore will be limited to her status as a secured creditor.

28 4. Motion, at 5:25-6:11.

1 above."⁵ Although on a cursory reading, the description of
2 collateral purports to encompass "all dairy livestock now owned
3 or hereafter acquired without limitation,"⁶ it does not
4 necessarily follow and the trustee does not allege that Enes
5 therefore had a properly perfected first-priority security
6 interest in any or all the livestock that generated CWT's
7 \$323,745 payment to her.

8 On the contrary, the description of collateral leaves open a
9 host of questions, such as whether Enes' lien had priority as
10 against subsequent purchase money security interests such as,
11 allegedly, Sanders', whether the CWT payment was property of a
12 type sufficiently described in the security agreement, whether it
13 properly falls within the definition of "additions" or
14 "replacements," as described in the security agreement, whether
15 it constituted a general intangible, and if so, whether the
16 security agreement covers general intangibles, whether the CWT
17 payment constituted proceeds of livestock in which Enes had a
18 security interest, and if so, whether the security agreement
19 covers such proceeds,⁷ and fundamentally, whether the livestock
20 that generated the payment even belonged to the debtor or whether
21 they belonged to a third person such as Sanders, who, he alleges,
22 had some cattle on loan to the debtor.

23 / / /

24
25 5. Complaint, filed October 19, 2009, ¶¶13, 15, 16, 17.

26 6. Id., ¶13.


27 7. The court notes that the word "proceeds" appears in the
28 quoted portion of the security agreement only in the reference to
"milk proceeds" and "cash proceeds," the latter of which appears
to refer back to milk and milk products and proceeds.

1 In short, the court disagrees with Enes, and concludes that
2 the allegations of the complaint demonstrate a justiciable
3 controversy as to whether the proceeds were rightly paid to Enes,
4 as opposed to the trustee or Sanders. Thus, as to the first
5 claim for relief, the court will deny the Motion.

6 III. CONCLUSION

7 For the reasons set forth above, the Motion will be denied.
8 The court will issue an appropriate order.

9 Dated: January 26, 2010

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11 ROBERT S. BARDWIL
12 United States Bankruptcy Judge
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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document on today's date to each of the parties listed below:

Clifford Stevens
P.O. Box 20
Stockton, CA 95201-2030

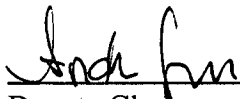
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DATE: JAN 26 2010


Deputy Clerk